



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 07, 2022

IN THE MATTER OF:

Appeal Board No. 621579

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination reducing the claimant's right to receive future benefits by 168 effective days and charging a civil penalty of \$1,965.60 on the basis that the claimant made willful misrepresentations to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed February 8, 2022 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J. Case Nos. 021-36680, 021-11804, and 021-05810, and overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determination of willful misrepresentation and civil monetary penalty. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for a nursing home for approximately 20 years, ending in the position of nursing assistant. The claimant separated from this job in late February 2020. The claimant continued to work at a hospital where she had worked since 1998. At the hospital, the claimant had been employed in various capacities, and was currently working as a technician sterilizing instruments. From March through September 2020, the claimant worked for the hospital part time, three days per week, and was paid at least

\$504.00 each week. The claimant was aware that her earnings were greater than \$504.00 each week.

Because she had lost one of her jobs, the claimant filed a claim for benefits online on May 18, 2020, with an effective date of March 9, 2020.

When the claimant certified for benefits each week, the claimant was asked how many days she worked that week and whether she earned more than \$504. She answered these questions based on the job she had lost. The claimant submitted a certification form dated May 29, 2020, stating "I was eligible" with respect to the weeks ending March 22 through May 10, 2020. The pre-printed portion of the form stated that a certification of "I was eligible" meant, among other things, that "I did not work any day, including self-employment," and "I did not earn more than \$504, excluding self-employment." The claimant subsequently certified online each week and answered a question that asked, "How many days did you work, including self-employment, during the week ending \_\_\_\_\_?" For each week from the week ending May 17, 2020 through the week ending September 27, 2020, she certified that she worked "0" days and also certified that she did not earn more than \$504.00. The claimant received \$13,104.00 in regular benefits, \$10,200.00 in FPUC benefits, \$1,008.00 in PEUC benefits, and \$1,800.00 in LWA benefits to which she was not entitled.

OPINION: The credible evidence establishes that, for each week from the week ending March 22, 2020 through the week ending September 27, 2020, the claimant certified that she did not work or earn more than \$504.00, when in fact she worked and earned more than \$504.00 in each of these weeks. Although the claimant testified that she thought she was certifying only with respect to the job that she lost, this mistaken belief was not consistent with the wording of the questions she was asked. The certification form that the claimant used for her initial weeks of benefits stated that "I was eligible" meant "I did not work any day, including self-employment," and "I did not earn more than \$504, excluding self-employment." In her online certifications each week, the claimant was asked, "How many days did you work, including self-employment, during the week ending \_\_\_\_\_?" None of these questions were limited to work or earnings from any particular employer. Rather, they asked about all work and any earnings from employment other than self-employment. The claimant was responsible for the truthfulness of her answers. As the claimant knew that she worked and earned more than \$504.00 each week, her certifications were knowingly false. Therefore, her false certifications constitute willful misrepresentations for purposes of the

Unemployment Insurance Law. Accordingly, we conclude that the claimant is subject to a forfeiture penalty and civil monetary penalty.

DECISION: The decision of the Administrative Law Judge, insofar as appealed from, is reversed.

The initial determination, reducing the claimant's right to receive future benefits by 168 effective days and charging a civil penalty of \$1,965.60 on the basis that the claimant made willful misrepresentations to obtain benefits, is sustained.

The claimant is denied benefits with respect to the issues decided herein.  
(Al reclamante se le niegan beneficios con respecto a los temas decididos en el presente.)

MICHAEL T. GREASON, MEMBER